

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:09-CR-66-BO

UNITED STATES OF AMERICA,)
)
 v.)
)
TIMOTHY SHERRON JOHNSON,)
)
 Defendant.)
_____)

ORDER

This matter is before the Court on Defendant's Motion for Amended Judgment and Commitment or *nunc pro tunc* Designation of Sentence. Defendant, *pro se*, is essentially filing a Motion for Correction of a Clerical Error pursuant to Rule 36 of the Federal Rules of Criminal Procedure.

On July 29, 2009, Defendant entered into a plea agreement wherein he agreed to plead guilty to Count Two, possession with intent to distribute marijuana, and Count Three, possession of a firearm in furtherance of a drug trafficking crime, of the criminal indictment. D.E. #23. On November 16, 2009, Defendant was sentenced to forty (40) months imprisonment as to Count Two and the statutory mandatory minimum sixty (60) months imprisonment, consecutive as to Count Three. D.E. #34. Defendant did not appeal his conviction or sentence.


Defendant's motion asks the Court to correct an "oversight" that these sentences should run concurrently, not consecutively. However, contrary to Defendant's assertion that the judgment was "silent on the execution of the sentence," the judgment explicitly states that the 60 month sentence imposed as to Count Three "shall run consecutive to Ct. 2." D.E. #34. Furthermore, a consecutive sentence is mandated by statute. *See* 18 U.S.C. § 924(c)(1)(D)(ii)

("no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed").

Accordingly, Defendant's Motion is DENIED.

SO ORDERED.

This 14 day of June, 2010.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE